

### **REMARKS**

In view of the Examiner's helpful comments, applicants have amended the specification by inserting headings as appropriate and by revising the abstract. Applicants have also amended the claims to remove reference numerals and terminology not customary in this country and to improve the claim language. No new matter has been added. Applicants have split claim 4 into claims 4 and 6 and have replaced claim 5 with claim 7. Based on these amendments, the objection to claim 4 and the rejection of claim 3 as indefinite should be withdrawn.

As amended, the claims in this application are directed to a cervical intervertebral prosthesis that includes two cover plates that are configured to be connected to adjacent vertebral bodies, a securing plate separate from the cover plates which secures only one of the cover plates to one of the vertebral bodies and is configured to be fastened to a ventral surface of that vertebral body and a prosthesis core which forms an articular joint with one of the cover plates. Claim 2 sets forth a preferred embodiment of the invention, in which one of the cover plates of the cervical intervertebral prosthesis is provided with a limit stop surface facing in a dorsal direction relative to the vertebral bodies. The invention as defined in the amended claims is patentable over the cited prior art.

Claims 1 and 2 stand rejected as anticipated by Rezaian. This rejection is respectfully traversed since Rezaian not disclose a prosthesis including a core in which the core forms an articular joint with one of the cover plates. Even if flat plates 4 and 5 can be equated with the claimed two cover plates, neither of them forms an articular joint with the core. Accordingly, the rejection of claims 1 and 2 as anticipated by Rezaian should be withdrawn.

Claim 5 stand rejected as anticipated by Michelson. The Examiner reads Michelson as disclosing an instrument 50 having a drill gage 55, 56, for positioning a securing plate which is to be fastened by fastening screws to the ventral surface of an intervertebral body, referring to Fig. 18 for an alleged disclosure of the invention of claim 5. This rejection is respectfully traversed in view of the replacement of claim 5 with claim 7.

Although Michelson may disclose a drill gage, it does not relate to the positioning of fastening screws for cover plates, one of which forms an articular joint with a prosthesis core. There is further no disclosure in Michelson of the configuration of the drill gage to be fixed to the prosthesis or a prosthesis model in a predetermined relative position. Accordingly, the rejection of claim 5 as anticipated by Michelson should be withdrawn.

Claim 3 stands rejected under 35 USC 103(a) on Rezaian in view of Bryan. The Examiner cites Rezaian as disclosing “the claimed invention except for the fastening means being biodegradable.” The Examiner refers to Bryan as disclosing “an endoprosthesis that will encourage bone attachment to, and growth upon, adjacent outer surfaces of the endoprosthesis, and a vertebral endoprosthesis in which the parts are nononcogenic.” Based upon this reading of Rezaian and Bryan, the Examiner concludes that it would have been obvious at the time the invention was made to a person of ordinary skill in the art to construct the device of Rezaian with biodegradable fastening means in view of Bryan. This rejection and its supporting reasoning are respectfully traversed.

As explained above, Rezaian does not disclose all of the claimed invention except for the fastening means being biodegradable, so the rejection should be withdrawn on that ground alone. Furthermore, claim 3, both before and after the amendments above, did not state that the fastening means was biodegradable, rather that the securing plate is biodegradable. The Examiner appears not to have recognized the actual language of claim 3. The Examiner has pointed to nothing in Bryan that discloses a biodegradable securing plate, and, in fact, Bryan discloses no such securing plate. The Examiner does not identify what in Bryan corresponds to the claimed securing plate, and applicants respectfully submit that there is no securing plate disclosed in Bryan that is similar to what applicants disclose and claim. The only thing that Bryan discloses that is biodegradable are cannulated screw devices 82, 84, which are used to affix wings or legs 72 or 74 of the supports 32, 34. Concaval-convex means 30 is not disclosed to be biodegradable. If the Examiner is referring to plate 340 as depicted in Fig. 6 as

corresponding to the claimed securing plate, applicants note that there is no indication that this plate is biodegradable. Since plate 340 is fixed by weldments 341 to leg 342, it therefore does not meet the requirement of the claims that the securing plate is separate from the cover plates. Since plate 340 must be capable of being welded, it is not reasonably considered to be biodegradable. Finally, just because a given material is nononcogenic (or biocompatible) does not mean that it is *ipso facto* biodegradable. For all these reasons, therefore, claim 3 is patentable over the combination of Rezaian and Bryan.

The arguments above also demonstrate that the remaining claims in this application as amended are patentable over the cited prior art and should be allowed.

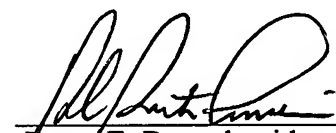
Early action allowing claims 1-4, 6 and 7 in this application is solicited.

In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing Docket No. **246472006600**.

Respectfully submitted,

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